

1 haven't they?

2 A They have now. At the time, I don't
3 recall whether or not they had filed their
4 bankruptcy plan. I don't think it had been a
5 confirmed plan as of that date, and they probably
6 had not filed for bankruptcy, but I'm not certain of
7 that.

8 Q Was Western MacArthur a prepack?

9 A Yes.

10 Q Prepack means that it was agreed to by a
11 group involving both creditors and the debtors
12 before the bankruptcy is filed; is that correct?

13 A Essentially, my understanding, it's where
14 the bankruptcy plan, and the disclosure statement
15 are generated through the agreements that you
16 mentioned, and there's a solicitation of votes taken
17 all prior to the filing of the bankruptcy. It's
18 kind of all those things.

19 Q Go ahead.

20 A I know you're going to ask me. I believe
21 that all of those steps have been undertaken in
22 Western MacArthur, but I'm not absolutely certain.
23 Certainly there was a basic agreement between the
24 company and the representatives of the asbestos
25 victims in that case and a number of insurers, too,

1 I believe.

2 Q And that agreement involved all of the
3 stock of Western MacArthur, ending up owned by
4 trusts; is that correct?

5 MR. FINCH: Object to form.

6 THE WITNESS: I don't recall.

7 BY MR. MILLER:

8 Q Pardon me?

9 A I don't recall. No, no, it did not, as a
10 matter of fact, it did not. I don't think that's
11 true.

12 Q What happened to the stock in Western
13 MacArthur?

14 A Well, it continues as an independent
15 entity, and so at least some of the stock was not --
16 the three entities, and what's the stock ownership
17 of each of those three entities, I can't tell you,
18 but the company does exist, continues to exist and
19 operate, and it's owned independently. And what the
20 stock arrangements were for that, I can't tell you.
21 By independently, it's not owned by the trust.

22 Q What was the nature of your testimony in
23 the Western MacArthur matter?

24 MR. FINCH: Which matter are you referring
25 to? The first one? There's two listed on here.

1 MR. MILLER: I'm referring to the first
2 one that's first listed, then, not the in re,
3 western but the Western MacArthur versus General
4 Accident insurance that we've been talking about.

5 THE WITNESS: There, I testified primarily
6 about the nature of asbestos litigation. It was a
7 jury trial, and I testified about the nature of the
8 asbestos litigation, how it's carried out, and
9 Western MacArthur's participation in asbestos
10 litigation.

11 BY MR. MILLER:

12 Q Was that a suit against insurance
13 companies to try to recover insurance money?

14 A Well, it was an insurance recovery action.
15 I don't know whether -- who filed it, if it was a
16 deck action by the insurance companies or by Western
17 MacArthur. But it was a litigation between Western
18 MacArthur as the insured and some of its insurance
19 companies.

20 Q And your testimony was in support of
21 recovery from the insurance companies, entities who
22 were trying to recover from the insurance companies;
23 is that correct?

24 A What do you mean by "in support of"?

25 Q The entities who retained you were in the

1 position of trying to get money from the insurance
2 companies; is that correct?

3 A I would regard that as a different
4 question than the prior one, and the answer to that
5 is yes.

6 Q B&W asbestos creditors committee, et al.,
7 versus Bwico, et al . I spelled that last one. Is
8 that the nest entry?

9 A That's correct.

10 Q Is Bwico pronounced in some way?

11 MR. FINCH: Bwico.

12 BY MR. MILLER:

13 Q Mr. Finch has offered to pronounce it for
14 us. Do you understand that's the way it's
15 pronounced?

16 A I've heard it. I don't know that that
17 pronunciation's ever passed my lips.

18 Q I see. How do you refer to that entity,
19 if you have to refer to it?

20 A I'm not sure that I refer to it. So I
21 don't recall having done so.

22 Q What entity retained you in that matter?

23 A It was the asbestos creditors committee in
24 the Babcock & Wilcox bankruptcy proceedings.

25 Q You refer to next a Senate Judiciary

1 Committee testimony in June 2003. Do you see that
2 entry?

3 A Yes.

4 Q What entity or entities paid for your time
5 in connection with that?

6 A Well, again, it's a group of asbestos
7 trusts and asbestos creditors committees.

8 Q And what was S.1125 going to do as you
9 recall?

10 A Well, it was a bill -- what it was going
11 to do, it was going to collapse into chaos, but what
12 it was intended to do by its proponents -- that's
13 not fair. What it was purported to do was to create
14 a trust fund to pay asbestos victims that would be
15 funded by asbestos trusts, by insurance companies,
16 asbestos defendants, and that would have
17 essentially -- not essentially, would have, in fact,
18 stayed and stopped any opportunity for asbestos
19 litigation of bodily injury claims.

20 Q I take it from one of your comments, that
21 your testimony was in opposition to S.1125; is that
22 true?

23 MR. FINCH: Objection to form.

24 THE WITNESS: I think that's an unfair
25 characterization.

1 BY MR. MILLER:

2 Q Well, were you testifying on facts that
3 you felt or opinions that you felt counseled against
4 the passage of S.1120 in its present form?

5 A In its then-current form, I testified
6 about problems with the legislation, that it would
7 have the funding that was proposed in the
8 legislation would be insufficient to pay the claims
9 that were to be channeled through this national
10 fund. So it was insufficient funded. And it also
11 would have created a lengthy delay -- even those who
12 got paid, claimants who would get paid would, in
13 many instances, have to wait decades to get paid.
14 So I testified essentially about matters such as
15 that and offered to the committee to work with them
16 in trying to correct those problems. But, that was
17 my testimony. Essentially, it was it would not
18 accomplish its goals.

19 Q In the in re, Western MacArthur entry that
20 refers to bankruptcy court, Oakland, California,
21 deposition and trial. Do you see that?

22 A Yes.

23 Q What entity retained you in that matter?

24 A I believe I was retained by the claimants'
25 committee, the asbestos claimants' committee in the

1 Western MacArthur bankruptcy.

2 Q And Armstrong versus CCR, that's the next
3 entry; right?

4 A Let me add one thing to your last
5 question. I'm sorry. I testified essentially on
6 behalf of both the claimants' committee and Western
7 MacArthur -- MacArthur, and Western Insulation as
8 well, but I was essentially retained by the
9 committee. And I do see Armstrong versus CCR, yes.

10 Q CCR stands for Center for Claims
11 Resolution?

12 A Yes.

13 Q What entity retained you in that matter?

14 A I don't recall much about that.

15 MR. FINCH: Would you like me to clarify
16 that?

17 MR. MILLER: Sure.

18 MR. FINCH: Dr. Peterson is the consultant
19 and expert for the asbestos personal injury
20 claimants committee in the Armstrong bankruptcy.
21 The litigation referred to there was between
22 Armstrong and the Center for Claims Resolution, and
23 I honestly do not recall whether the asbestos
24 claimants committee was a party to that litigation
25 or not.

1 Sitting here, I can't recall.
2 Dr. Peterson was retained expert for the ACC. I
3 don't know if Armstrong joined the ACC in that
4 litigation or not. I just know that he provided
5 expert opinions relating to Armstrong's liability at
6 various points in time that Armstrong would then use
7 in its litigation against the CCR. That litigation
8 was settled shortly before it was supposed to go to
9 trial.

10 BY MR. MILLER:

11 Q Did that help, Dr. Peterson?

12 A Not much. I don't even recall having been
13 deposed in that case. Blissfully, that one slipped
14 from my memory bank.

15 Q Is it safe to assume that you are not
16 retained by the CCR?

17 A Well, I'd be happy to be retained by the
18 CCR, but in that case, I don't believe I was
19 retained by the CCR.

20 Q In re, Armstrong World Industries
21 bankruptcy, Delaware, that's the next entry;
22 correct?

23 A Yes, it is.

24 Q What entity retained you in that matter?

25 A It's the asbestos personal injury

1 claimants that Mr. Finch just referred to.

2 Q The next entry --

3 A And I think I testified both on behalf
4 then and the futures representative in the Armstrong
5 case is my recollection.

6 Q When we've used the term "futures
7 representative," we're referring to the futures
8 representative for asbestos personal injury
9 claimants is the full name usually; right?

10 A Sometimes, they represent other -- led,
11 for example, in some cases, but in Armstrong I
12 believe it was solely asbestos claims.

13 Q I'm sorry. Sometimes they represent who?

14 A Other categories of claimants as well.
15 I've seen that happen, but not in Armstrong.

16 Q The next entry is in re, Babcock & Wilcox
17 company; is that correct?

18 A Yes.

19 Q What entity retained you in that?

20 A The asbestos claimants committee in that
21 bankruptcy.

22 Q The next entry is in re, Oglebay Norton.
23 Do you see that?

24 A Yes.

25 Q What entity retained you in that matter?

1 A That was an unofficial committee of
2 asbestos claimants in that bankruptcy. That's it.

3 Q The next entry is in re, Owens Corning
4 that we've talked about a little bit; is that
5 correct?

6 MR. FINCH: Object to form.

7 MR. MILLER: Let me state it again.

8 BY MR. MILLER:

9 Q The next entry is in re, Corning, in re,
10 Owens Corning; right?

11 A Yes, it is.

12 Q We've talked about that a little bit
13 already; is that true?

14 A I did, yes.

15 Q What entity or entities retained you in
16 that matter?

17 A There was the asbestos claimants committee
18 in the Owens Corning bankruptcy, and I think I
19 testified both on their behalf and on behalf of the
20 futures representative in that case.

21 Q The final entry on your page is in re,
22 American Capital Equipment, LLC, and Skinner Engine
23 Company; is that correct?

24 A Yes.

25 Q Does that involve asbestos?

1 A Yes.

2 Q What entity retained you in that matter?

3 A I think I was engaged by the company in
4 that case, by Skinner Engine. But again, it's a --
5 it is a litigation between the company -- jointly
6 between the company and the plaintiffs' lawyers,
7 primarily involving, I guess, the insurance company.
8 So there's a common interest between the claimants
9 and the company. But I think that the retention's
10 by the company.

11 Q Were you also retained by an asbestos
12 claimants committee in that matter, if you know?

13 A I don't believe so, just my recollection,
14 because my work has been primarily with the
15 insurance council, who works for the company. But
16 the specifics of that engagement, how my testimony
17 was offered, I just -- presently, it's vague to me.

18 Q On this page, would you indicate which of
19 these matters you worked with lawyers from Caplin &
20 Drysdale on?

21 A What do you mean "worked with"?

22 Q Where the primary law firm that worked
23 with you with regard to your testimony or that
24 presented your testimony was a lawyer from Caplin &
25 Drysdale.

1 A My testimony was presented by lawyers from
2 Caplin & Drysdale, working from the bottom up, in
3 the Owens Corning case, the Armstrong World
4 Industries bankruptcy. I simply can't recall in the
5 Armstrong versus CCR. I don't believe it was Caplin
6 Drysdale, but actually, I just don't recall.

7 The Bwico case -- in Bwico -- there, I
8 said it -- that was Caplin & Drysdale. The Sealed
9 Air, Grace Sealed Air case. That's it.

10 Q Who retained you in Federal Mogul, what
11 entity?

12 A That was -- well, my testimony was -- who
13 retained me was the asbestos retainment committee.

14 Q That was where you worked for Caplin &
15 Drysdale?

16 A Yes.

17 Q That wasn't on the list, I understand.
18 That wasn't in my prior question. As of the date
19 that this list was prepared in January of 2005, is
20 it true that most, if not all, of your contested
21 estimations testimony have been for asbestos
22 claimants?

23 A Could you read that question back, please?

24 Q Yes. As of January 2005, wasn't it true
25 that most, if not all, of your contested asbestos

1 estimations testimony had been for asbestos
2 claimants?

3 MR. FINCH: Object to form; compound.

4 THE WITNESS: I don't -- I'm not sure
5 that's true. I haven't sat down and added them up.

6 BY MR. MILLER:

7 Q Do you recall giving testimony to that
8 effect in the Owens Corning trial?

9 A I don't recall that. This list suggests
10 that that may not be true.

11 MR. FINCH: Ralph, when is a good time to
12 take a break?

13 MR. MILLER: Let me finish this, and then
14 we'll take a break.

15 MR. FINCH: All right.

16 BY MR. MILLER:

17 Q Dr. Peterson, you do recall giving trial
18 testimony in the Owens Corning matter in Judge
19 Fullum's court, January 17, 2004, don't you?

20 A Yes.

21 Q I'm going to show you the trial -- I'm
22 sorry. It says 2004, but it's wrong. It is 2005.
23 I misspoke. Actually, the transcript is misdated,
24 but we all agree it was 2005, I think.

25 MR. FINCH: Yes, we do.

1 THE WITNESS: Yes.

2 BY MR. MILLER:

3 Q I'm going to direct your attention to page
4 95, and I want to direct your attention specifically
5 to lines 17 through 19 to see if that refreshes your
6 recollection that at the time, you had indicated
7 that most, if not all, of your contested estimations
8 testimony had been for asbestos claimants.

9 A This doesn't refresh my recollection, but
10 I assume that this is a correct representation of
11 testimony.

12 MR. FINCH: I would ask that for under the
13 rule of completeness, the question on page 96, line
14 6, and the answer to that be read into the record.
15 Dr. Peterson, can you, please, turn to the next page
16 in your trial testimony and read into the record the
17 question beginning at line 6 and the answer to that
18 question?

19 THE WITNESS: You want me to read the
20 question and answer?

21 MR. FINCH: Read the question and answer
22 into the record, please.

23 MR. MILLER: Let me suggest this, if we
24 can. I object to you doing optional completeness
25 when I haven't finished the testimony about this

1 particular document. So I'll let you do that, but
2 I'm going to ask him to read the whole question and
3 answer on page 95. If you want him to read some
4 more, you can, but that will put it in context.
5 Will that be all right with you?

6 MR. FINCH: That's fine. Read the
7 question and answer on page 95 and under the rule of
8 completeness, I would ask that the question and
9 answer be read on page 96.

10 MR. MILLER: I'll do that to.

11 BY MR. MILLER:

12 Q On line 95, line 12, you were asked "you
13 wouldn't really call yourself a neutral expert who
14 had testified regularly for both sides in contested
15 valuation cases, would you?"

16 Would you read your answer there between
17 lines 15 and 20 there please, slowly?

18 A My answer was "I regard myself as a
19 neutral expert having worked for all parties and
20 that I apply the same methods and try and be -- use
21 the same approaches in all the work I do. I think
22 that most of my, if not all of my, contested
23 estimations testimony has been for asbestos
24 claimants. I have done other testimony as to -- for
25 other parties."

1 MR. FINCH: Now, Dr. Peterson, could you
2 turn to the next page and read --

3 MR. MILLER: Wait a minute. Let's go
4 ahead and read all the way through.

5 BY MR. MILLER:

6 Q The next question on line 21 was "my
7 question is simple, sir. You have not testified
8 regularly for both sides in contested valuation
9 cases, have you?"

10 And your answer on line 24 was?

11 A "That is correct."

12 Q The next question on the next page, "in
13 fact, over the past seven or eight years, at the
14 least you've been a regular witness for the
15 claimant's committee in federal bankruptcy
16 proceedings?"

17 And your answer was?

18 A "I've testified a number of times. I
19 don't know what you mean by regular witness."

20 Q Then the next question was, which
21 Mr. Finch wanted to have read, "well, you testified
22 over 20 times, haven't you, for claimant's
23 committees?"

24 And your answer was "I think that's across
25 all engagements. I have also testified for

1 insurance companies in estimations, contested
2 estimations. I have also testified for trusts in
3 contested estimations. So it's not exclusively for
4 claimant's committees."

5 The next question, "Dr. Peterson, you
6 testified over 20 times on behalf of claimant's
7 committees in bankruptcy proceedings, haven't you?"

8 And your answer was?

9 A "I don't recall the count of it. I think
10 I said I've testified over 20 times, and that
11 includes a variety of different defendants. How
12 many --"

13 Q And the Court interrupted and said "most
14 of them, most of them were for plaintiffs; right?"

15 And your answer on line 19 was?

16 A "Well; certainly, certainly."

17 MR. MILLER: This would be a good time to
18 take a break if you'd like to.

19 MR. FINCH: Okay.

20 VIDEO OPERATOR: We're off the record.
21 The time is approximately 10:28 a.m.

22 (Recess.)

23 VIDEO OPERATOR: We are back on the
24 record. The time is approximately 10:54 a.m. This
25 is the beginning of tape number 2.

1 BY MR. MILLER:

2 Q Mr. Peterson, looking back at tab 2 of
3 your expert testimony for the last four years --

4 A I have it.

5 Q -- would you indicated if there are any of
6 these matters in which you were first retained by an
7 asbestos creditors committee and then retained by
8 the company?

9 A I may have been in Western MacArthur. I
10 just don't recall the timing, Western MacArthur
11 versus General Accident, Fuller Austin.

12 Q Fuller Austin, you were first retained by
13 the asbestos claimants' committee?

14 A In the prepack discussion, yes, National
15 Gypsum, Lippe, the McKeene litigation.

16 Q And you indicate -- have you finished,
17 sir?

18 A No.

19 Q Okay. Thank you.

20 A Whatever the role in Armstrong was,
21 Armstrong versus CCR.

22 Q I'm sorry. Could you clarify that answer?
23 Whatever the role that was, you were first retained
24 by the ACC?

25 A Yes. I was working for the asbestos

1 claimants' committee, as Mr. Finch stated, and I
2 don't know on whose behalf I was testifying in the
3 Armstrong versus CCR. Apparently, it was on behalf
4 of the company. So if I wasn't engaged by them, if
5 I wasn't retained by them, but since they pay
6 everybody in a bankruptcy, it doesn't make much
7 difference, I guess. I think that's it.

8 Q So any matter on this list in which you
9 were retained by a company and you had no work for
10 the asbestos claimants' committee in that same
11 matter?

12 A On this list?

13 Q Yes, sir.

14 A I think the Skinner Engine is that.

15 Q Any others?

16 A I think that's the only one.

17 Q What year was Skinner Engine?

18 A 2005.

19 Q You've given a deposition in that matter;
20 is that right?

21 A Yes. I just -- yes.

22 Q About what percentage of your time in 2005
23 has been spent on the Skinner Engine case, would you
24 estimate?

25 A Oh, not much. It's just some analyses and

1 a trip to -- actually, I think the deposition was in
2 Los Angeles. It's a relatively modest engagement.

3 Q That would be under 10 percent of your
4 time?

5 A Certainly, yes.

6 Q Under 5 percent?

7 A I don't know.

8 Q Perhaps between 5 and 10 percent?

9 A I don't know.

10 Q As you look at this list, do you recall
11 how many of these matters where you did asbestos
12 estimation, another expert was retained by someone
13 other than a future claims representative?

14 A On the list on page 1?

15 Q Yeah. Would you tell us which of these
16 matters there was an expert retained by some entity
17 on asbestos estimation other than you or an expert
18 retained by future claims representative by personal
19 injury claimants?

20 A Well, Fuller Austin, National Gypsum,
21 Lippe, Grace, Western MacArthur, B&W Asbestos
22 creditors committee, Bwico, the Western MacArthur
23 bankruptcy. I don't know that there was one in the
24 insurance litigation. Sitting here, I don't know
25 one way or the other. I don't know one way or the

1 other about Armstrong versus CCR. Armstrong
2 confirmation hearing was. Babcock & Wilcox, there
3 was, the bankruptcy deposition at trial. Oglebay
4 Norton there was. Owens Corning, there was, and I
5 don't know whether or not there is one in Skinner
6 Engine.

7 Q Let's take those in reverse order. In
8 Owens Corning, you gave an estimate for asbestos
9 liabilities; is that true?

10 A I gave a range of estimates of asbestos
11 liabilities for both Owens Corning and for Fiber
12 board.

13 Q You had a preferred estimate for Owens
14 Corning; isn't that true?

15 A I think that's correct.

16 Q As you had your best estimate?

17 A I think that's correct.

18 Q In Owens Corning, your best estimate for
19 asbestos liability was higher than any of the other
20 expert estimates for asbestos liability; isn't that
21 true?

22 A Yes.

23 Q In Oglebay Norton, did you have an
24 estimate for asbestos liabilities?

25 A No.

1 Q What was your issue there?

2 A I was testifying in rebuttal to the
3 testimony by Dr. Vasquez, who was the expert for
4 Oglebay Norton, the debtor, and about -- primarily
5 that.

6 Q You did not prepare an estimate in Oglebay
7 Norton, then?

8 A That's correct.

9 Q What was the nature of your rebuttal
10 testimony about Dr. Vasquez's estimate? Let me
11 rephrase that question.

12 Did you express any opinion as to whether
13 the estimate of Dr. Vasquez, in your view, was too
14 low or too high?

15 MR. FINCH: Object to form.

16 THE WITNESS: I recall testifying that you
17 couldn't make an estimate based upon the information
18 that he used -- I recall that -- and that his
19 estimate was, I thought, flawed in a number of
20 respects. And I don't recall whether I said it was
21 too low or too high.

22 Q Babcock & Wilcox, did you give an estimate
23 of asbestos liability?

24 A In the bankruptcy case, yes.

25 Q Did any other expert give an estimate of

1 asbestos liability in that case?

2 A Yes.

3 Q Who?

4 A It was Dr. Bates, Charles Bates.

5 Q He's someone who used to work in the past
6 with Dr. Vasquez; right?

7 A Yes.

8 Q Did you have a preferred estimate or
9 recommended estimate to Babcock & Wilcox within your
10 range?

11 A I don't recall.

12 Q Do you recall if your estimate was higher
13 than the estimate of Dr. Bates in Babcock & Wilcox?

14 A I believe -- I don't recall what
15 Dr. Bates's testimony was in that case. So I cannot
16 answer that question. I just don't recall.

17 Q You started to say "I believe." Do you
18 think your estimate was higher or lower?

19 A I stated my answer.

20 Q In Armstrong, did you give an estimate of
21 asbestos -- the Armstrong confirmation, that is, did
22 you give an estimate of asbestos liability?

23 A Yes.

24 Q Was there another expert that gave an
25 estimate of asbestos liability?

1 A Dr. Chambers testified there. I think the
2 primary nature of her testimony was about her
3 certainty that the asbestos litigation --
4 legislation, excuse me, the asbestos legislation was
5 going to be adopted soon, and I don't recall whether
6 or not she made an estimate in that case. I don't
7 recall.

8 Q The Armstrong versus CCR matter, I think
9 you said you don't recall enough to know whether you
10 gave an estimate or not?

11 A I don't recall that case, no.

12 Q In the Bwico part of B&W, was there an
13 estimate of liability?

14 A Yes.

15 Q Was someone else giving an estimate of
16 asbestos liability in that matter?

17 A I believe so.

18 Q Who?

19 A Dr. Dunbar, Fred Dunbar.

20 Q Was your estimate higher than Dr. Dunbar's
21 in that matter?

22 A I don't know that he did. He testified
23 that the estimate of the company, the company made
24 was reasonable, and sitting here, I don't recall
25 whether or not he made an estimate in that case. I

1 think maybe he did not.

2 Q Did the company make an estimate in that
3 case?

4 A It didn't make a contemporaneous estimate.
5 It had estimated values -- it had a limited estimate
6 for a short period of years at the time of the
7 transaction.

8 Q Was it your opinion that the limited
9 estimate for a short period of years was lower than
10 your estimate in that case?

11 A It, in fact, was lower.

12 Q And in Grace, did you give an estimate of
13 asbestos liability?

14 A Yes.

15 Q Did another expert give an estimate?

16 A I don't recall.

17 Q In Lippe, did you give an estimate of
18 asbestos liability?

19 A Yes.

20 Q Did another expert give an estimate also?

21 A I don't recall.

22 Q Within the last four years, did you give
23 an estimate in National Gypsum?

24 A I'm not sure that was in the last four
25 years. By now, it may not have been. Sitting here,

1 I can't tell you.

2 Q Federal Mogul, did you give an estimate of
3 asbestos liability?

4 A Yes.

5 Q Did someone else give an estimate?

6 A Yes.

7 Q Who else gave an estimate in that case?

8 A Dr. Robin Cantor, C-a-n-t-o-r.

9 Q Was your estimate or Dr. Cantor's estimate
10 higher in that matter?

11 A I had quite a range of estimates, but I
12 think they generally were higher, maybe all were
13 higher than hers.

14 Q Fuller Austin, did you give estimates of
15 asbestos liability in any of your testimony?

16 A Yes.

17 Q Did other experts give estimates?

18 A Yes.

19 Q Who else gave estimates in Fuller Austin?

20 A Dr. Tom Florence and, and I think there
21 was an estimate provided by an epidemiologist who
22 was retained by the insurance companies. I just
23 can't remember his name.

24 Q I assume your estimate was higher than the
25 epidemiologist retained by the insurance companies;

1 is that true?

2 A Yes -- well, I'm not sure quite what the
3 nature of his testimony was. Testimony, I don't
4 think I was sure, but his testimony was unusual.

5 Q Who retained Dr. Florence?

6 A Fuller Austin insulation company and the
7 Fuller Austin trust.

8 Q Was he essentially retained by the same
9 parties who retained you?

10 A Yes.

11 MR. FINCH: Off the record.

12 VIDEO OPERATOR: We're off the record.

13 The time is approximately 11:10 a.m.

14 (Discussion off the record.)

15 VIDEO OPERATOR: We are back on the
16 record. The time is approximately 11:10 a.m.

17 BY MR. MILLER:

18 Q Other than Federal Mogul, have you given
19 any asbestos estimation testimony in the last four
20 years that is not reflected on this list?

21 A Well, there was just JT Thorpe I mentioned
22 previously. That was last month.

23 Q Was there another expert who gave an
24 asbestos estimate in that case?

25 A Yes.

1 Q Who?

2 A Doctor Chambers, Patricia Chambers.

3 Q Who had retained Dr. Chambers?

4 A Some of the companies that insured the
5 liabilities of JT Thorpe.

6 Q Was your estimate higher than the estimate
7 of Dr. Chambers?

8 A Yes.

9 Q Any other estimates that you recall giving
10 in the last four years on asbestos liability by way
11 of testimony that we haven't talked about in the
12 last -- since the break?

13 A We went over the list, the list earlier
14 this morning. I think that was everything I
15 mentioned.

16 Q Just a moment. I'm looking at my notes on
17 that. Your testimony with the Senate Judiciary
18 committee in 2005, you didn't give an estimate of
19 asbestos liability for the entire system, did you,
20 or did you? . That's a bad question. Let me start
21 over. Did you provide any estimates of asbestos
22 liability in your Senate testimony?

23 A I testified to the cost of the
24 compensation called for by the then-current version
25 of the bill, but used the prior estimates that were

1 done by the Congressional budget office as the basis
2 for that. But I did not testify about the
3 liabilities in tort litigation for any particular
4 asbestos defendant or for any group of asbestos
5 defendants.

6 Q Let me change subjects and talk a little
7 bit about the Georgine case. If you look at page 1
8 of your report, I think you'll see about the third
9 sentence says "by January 31, 1994, GAF had entered
10 into a class action settlement as a member of
11 defendant consortium called the Center for Claims
12 Resolution that would have restricted GAF's
13 liability with respect to future claimants by
14 limiting annual flows of cases and the money that
15 would be paid for future cases."

16 Do you see that reference?

17 A Yes.

18 Q That say reference to what is commonly
19 called a Georgine case; is that correct?

20 A Yes.

21 Q There's also what's called the Ahern case?

22 A Yes. It's a different case, yes.

23 Q Just so we're clear, when we talk about
24 Georgine, we are talking about that case; is that
25 right?

1 A That would be my understanding, the CCR
2 class action but not the Ahern class action.

3 Q Right. And you are familiar with fact
4 that there was a stipulation of settlement between
5 the class of claimants and defendants who were
6 represented by the center of claims resolution which
7 was also amended in the Georgine matter?

8 A It was a class of future claimants, yes.

9 Q All right. But if we refer to the terms
10 of the Georgine settlement, will that be a good
11 shorthand for the stipulation of settlement between
12 the class of claimants and the defendants?

13 A I understand your usage of the term.

14 Q In your report in exhibit 1, you were
15 estimating asbestos liabilities as of January 1994;
16 is that right?

17 A I was estimating the GAF's liabilities,
18 tort liabilities for asbestos bodily injury claims
19 effectively from January 31, 1994, but I used
20 January 1 for convenience.

21 Q Both January 1 and January 31 are both
22 1994?

23 A That's correct.

24 Q So if we refer to as of January 1994, will
25 that be reasonably clear when we're talking about a

1 point of time for something with as much range of
2 variation as asbestos estimates?

3 A Yes.

4 Q How did you take into account the effects
5 of the Georgine settlement in the analysis of GAF's
6 asbestos liability that you performed as of January
7 1994?

8 A Could you read that question back?

9 Q I'll do it again. How did you take into
10 account the effects of the Georgine settlement, if
11 you did, in your analysis of GAF's future asbestos
12 liabilities as of January 1994?

13 A By that, you mean the -- what we described
14 earlier, the particular stipulation of settlement as
15 amended? Is that what you're referring to.

16 Q I mean the stipulation of settlement and
17 the entire Georgine proceeding, whether you thought
18 that was going to affect future asbestos liabilities
19 and, if so, what you did about it?

20 A Using the broader description that you
21 just stated, I think the whole proceedings and
22 negotiations and everything about it would tend to
23 increase the number of future claims that I would
24 expect to have been filed in tort against GAF,
25 although I did not incorporate an increased

1 propensity to sue assumption in my forecast, at
2 least in the first section, in section 6 of my
3 report. I think that's the primary way I considered
4 it. The settlement was a settlement. It wasn't
5 reported to be a settlement of future claims. It
6 wasn't a tort liability. It wasn't -- whatever
7 rights people had under that settlement were
8 contractual rights.

9 Q What was the significance of that answer
10 you just gave? What difference does it make whether
11 it's contractual rights or not for your estimate
12 purposes?

13 A Well, it would have -- for the most part,
14 it would have taken the liability out of tort and
15 put it into contract.

16 Q So are you saying that contractual
17 replacement of tort liability is something you
18 disregarded in your analysis?

19 A I was estimating the tort liability.

20 Q When tort liability becomes a settlement,
21 it is converted into a form of contractual
22 liability, isn't it?

23 A Yes.

24 Q I'm trying to understand. Are you saying
25 there might be additional asbestos liabilities under

1 Georgine but they're outside your scope of work
2 because you consider them contractual instead of
3 tort? I think you're not saying that.

4 A It's one -- I did not make forecasts of
5 liabilities under Georgine.

6 Q Did you reduce in any way your forecast
7 based on some probability that Georgine might limit
8 future liability?

9 A As of January 1994, it didn't limit
10 liability. So it was as of that point in time, it
11 wasn't something that was binding on anybody and
12 didn't constitute -- I'll leave it at that.

13 Q Do you know when Georgine was initially
14 filed?

15 A I think it was filed in January '94. It
16 was about that time.

17 Q It was filed in January '93.

18 A I'm sorry.

19 Q Does that seem right maybe?

20 A Yes, yes. I beg your pardon.

21 Q Had the District Court preliminarily
22 approved the settlement as of January '94?

23 A I think that's correct.

24 Q Had any court rejected the settlement as
25 of January '94?

1 A No other court had heard it. It was on
2 appeal. It was being contested. It was a nonfinal
3 judgment.

4 Q Are you sure that it was on appeal in
5 January of 1994.

6 A If it hadn't been, it was going to be
7 appealed. I don't know when notice of appeal was
8 filed.

9 Q Do you know when the fairness hearing
10 occurred?

11 A Sitting here right now, I don't recall.

12 Q You didn't adjust your estimate based on a
13 possibility that the Georgine settlement would go
14 into effect, did you?

15 A I didn't do a probabilistic statement. At
16 this point in time, it was not a legal status of the
17 Georgine settlement wasn't something that affected
18 the rights of present claims future claimants or GAF
19 other than there was a stay in the proceeding, so
20 people couldn't file claims at the time, but it
21 wasn't the final adjudication or determination of
22 rights or a determination of the values or
23 eligibility of claims that the point in time.

24 Q Let me strike everything after the
25 statement that you did not do a probabilistic

1 estimate as nonresponsive.

2 As of January 1994, would you agree there
3 was some probability that the Georgine settlement
4 would be approved and would come into effect? And
5 by "probability," I mean a percentage, not
6 necessarily over 50 percent.

7 A There was some probability that it would
8 be effectuated and reach final resolution, yes.

9 Q Would you agree there was a significant
10 chance as of January 1994 that Georgine terms of
11 settlement would be substantially approved?

12 MR. FINCH: Object to form.

13 THE WITNESS: I don't know what you mean
14 by "significant chance."

15 BY MR. MILLER:

16 Q Greater than, say, 25 percent?

17 A I haven't attempted to quantify.

18 Q You wouldn't say that the probability of
19 Georgine going into effect as of January 1994 was 0
20 percent, would you?

21 A I think it was not 0 percent in January of
22 '94. I would agree with that, that it would be
23 approved on appeal.

24 Q Do you know which plaintiff law firms you
25 were involved in the Georgine settlement?

1 A I know the primary firms that were
2 involved in the -- there were class counsel, I
3 believe, and those who were opposing it.

4 Q Do you know which firms were in support of
5 the Georgine settlement? Can you give us the major
6 ones that you recall?

7 A The primary ones were -- was Gene Locks'
8 firm, Greitzer & Locks, and then I guess it was Ness
9 Motley at the time, N-e-s-s Motley.

10 Q Do you know whether the Center for Claims
11 Resolution began to process claims under the terms
12 of the Georgine settlement after the fairness
13 hearing?

14 A It's my understanding that they did.

15 Q But again, you're not sure when the
16 fairness hearing was; right?

17 A Sitting here right now, I don't recall.

18 Q Would you agree that the probability that
19 the Georgine settlement was going to be approved
20 went up after the fairness hearing, and it was
21 approved by the District Court?

22 A No.

23 Q Why not?

24 A I think that the expectation of most
25 people is it probably would have been -- well,

1 perhaps. I guess perhaps is probably a better
2 answer.

3 Q Perhaps the probability of approval went
4 up after the district judge had approved it at the
5 fairness hearing? Is that what you're saying? Is
6 that what the "perhaps" means?

7 A Because for Georgine to ultimately become
8 a judgment binding the rights of claimants, future
9 claimants, it had to go through several steps, the
10 first step of which it had to be approved in the
11 fairness hearing. And of course, it had to be
12 approved at whatever level of appeals were going to
13 be brought against it. To the degree that there was
14 uncertainty and some probability that the trial
15 court would not approve the fairness of the
16 settlement, then, once it was approved, you somewhat
17 reduce the uncertainty and the somewhat increase of
18 probability would eventually be passed. I think
19 most people didn't regard that as the primary forum
20 in which the settlement would be finally resolved.

21 Q Who are these "most people" you're
22 referring to?

23 A Lawyers, people I talk to about Georgine
24 class action at the time.

25 Q Who do you think those people were?

1 What's your recollection?

2 A I remember Gene Locks, Joel Rice, Ness
3 Motley, Fred Barren, Tom Henderson. All of them
4 knew it was going to be appealed and would be the
5 determination of an appellate court that would
6 ultimately pass on this.

7 (Phone ringing.)

8 Excuse me just a second. My wife is ill.

9 MR. FINCH: Off the record.

10 VIDEO OPERATOR: We're off the record.

11 The time is approximately 11:28 a.m.

12 (Discussion off the record.)

13 VIDEO OPERATOR: We are back on the
14 record. The time is approximately 11:34 a.m.

15 BY MR. MILLER:

16 Q You named a number of lawyers. Joe Rice
17 was one of the supporters of the Georgine
18 settlement; is that right?

19 A Yes.

20 Q Ness Motley was a supporter?

21 A Yes.

22 Q Gene Locks and his firm supported the
23 settlement?

24 A Yes.

25 Q Would you agree that they are all zealous

1 advocates for their clients?

2 A Yes.

3 Q You understand it was a part of their
4 professional responsibility to seek the best results
5 possible for their clients?

6 A Yes.

7 Q And they supported the settlements as
8 being in the best interest their clients, didn't
9 they?

10 A That's what they represent they did, yes.
11 I think there was some -- ultimately some concern
12 about that by the appellate courts.

13 Q You personally knew these people that
14 we've been mentioning as of that time, Joe Rice,
15 Gene Locks, and the Ness Motley firm, didn't you?

16 A Sure.

17 Q And you felt like they were certainly
18 doing the best they could for their clients, didn't
19 you?

20 A They had two sets of clients. They had
21 present claims and they were undertaking to
22 represent future claimants. I understood what they
23 did. There were differences in rights between how
24 the present claims and the future claims were
25 treated, which ultimately became problematic for the

1 attempt to sustain the appeal, the case on appeal.
2 I understand that.

3 Q You are aware that the Rice firm and the
4 Locks firm and the Ness Motley firm representing the
5 plaintiffs' class did submit statements in evidence
6 to the District Court; isn't that true?

7 A That's my understanding, although I don't
8 recall specifically what evidence was submitted.
9 Whatever I recall at the time, I didn't retain all
10 the evidence, but I believe they would have
11 submitted statements.

12 Q And there were statements were in support
13 of the settlement terms in the Georgine settlement;
14 isn't that correct?

15 A Well, of course. They were the lawyers
16 that negotiated the deal. They were advocating that
17 the district courts approve the fairness of the
18 deal. Of course, they supported it.

19 Q Now, your analysis in exhibit 1 is based,
20 in part, on the projection of behavior of asbestos
21 plaintiffs and their lawyers; isn't that correct?

22 A That is a consideration in making
23 forecasts, of course.

24 Q And you would agree that the way in which
25 plaintiffs and their lawyers view the value of their

1 claims was relevant to GAF's future exposure;
2 correct?

3 A It's the way they valued individual
4 claims, yes, because they negotiate settlements,
5 forecasting that, and you've got a history of what
6 they've settled for in the past, as to how they
7 valued the claims in the past. Well, it doesn't
8 directly reflect how they valued it. They probably
9 put higher values on claims when they were settled,
10 but the settlement reflects the joint agreement
11 between those lawyers and the lawyers for GAF.

12 Q One of the behaviors of plaintiffs'
13 lawyers that you are looking at in your estimation
14 process is how they deal with nonmalignant claims
15 that are not supported by pulmonary function tests;
16 isn't that correct?

17 A Could you read that question?

18 (The reporter read the record as
19 requested.)

20 I don't look at that as a specific and
21 explicit subject of analysis. There are -- I look
22 at forecasts of the numbers of nonmalignant claims
23 that have been -- the record of the number of
24 nonmalignant claims that have been filed
25 historically, the settlement amounts for those, and

1 forecast the number of nonmalignant claims that will
2 be filed in the future. But there really isn't
3 particularly good data to be able to disaggregate
4 those nonmalignant claims in the way that you've
5 asked.

6 Q One of the terms that's been used is the
7 term "unimpaired." You've heard that term used in
8 asbestos estimation proceedings, haven't you?

9 A Yes.

10 Q There is some debate as to what that term
11 means between the plaintiffs' claimants and asbestos
12 defendants; is that correct?

13 A I think there's substantial uncertainty
14 about what it means and what its implications are.

15 Q Do you agree that some nonmalignant claims
16 had higher values because they had strong evidence
17 of reduced lung function?

18 A That's kind of a yes and no. Yes, there
19 would have been some nonmalignant claims that had
20 extraordinarily serious conditions, and
21 particularly, if the case was tried or facing the
22 trial date, so the case was looked at individually,
23 they would have gotten higher values, yes.

24 Q Do you recall how the Georgine settlement
25 terms dealt with pleural plaque claims?

1 A Generally. I have not reviewed those
2 terms for this deposition.

3 Q Do you recall that there was a deferment
4 mechanism for certain types of claims under the
5 Georgine settlement terms?

6 A Well, there were some nonmalignant claims
7 that were not compensable under the terms of the
8 Georgine class action.

9 Q What is your memory of the general
10 categories of claims that were not compensable under
11 Georgine?

12 A I think there's several categories. My
13 recollection is that there are some cancer claims
14 that weren't compensable if they didn't have
15 findings of underlying asbestosis or pleural disease
16 and/or didn't have certain required levels of past
17 exposure. Among nonmalignant claims, there were
18 claims that if they did not -- again, I think there
19 was an exposure requirement and requirements of
20 certain levels of X-ray reading and/or pulmonary
21 function test readings that would cause the claims
22 to not be compensated under the Georgine deal. The
23 document speaks for itself. There were such cases.
24 Whatever the particular definition and
25 identification of those cases are, I, again, have

1 not reviewed it explicitly for this deposition, and
2 the record speaks for itself.

3 Q The plaintiffs' lawyers who were
4 supporting the Georgine settlement had agreed that
5 they would support some of these adjustments that
6 you've just described; isn't that true?

7 A They reached a settlement and had these
8 terms. So obviously, they agreed to them. A
9 settlement is an agreement. That's for future
10 claims.

11 Q At least with respect to the lawyers that
12 supported these terms, this reflected their judgment
13 that the terms were a fair approximation of what
14 they could obtain in the tort system; isn't that
15 true?

16 A No.

17 MR. FINCH: Object to form.

18 THE WITNESS: I don't agree with that.

19 BY MR. MILLER:

20 Q Why not?

21 A This is a settlement. It's a quid pro
22 quo. There's benefits that the Georgine settlement
23 provides to the claimants, and there's conditions
24 upon qualifications. So you can't look at one
25 element in isolation.

1 They agreed to take terms that, in many
2 cases, would have prevented recovery for claims that
3 were compensable in tort under a process that would
4 presumably allow them quick and certain recovery.
5 So that that was the deal they made. It doesn't
6 represent a recognition on their part that those
7 claims weren't compensatory. It was just a part of
8 the deal. They were willing to accept the
9 noncompensatory claims, some claims that would
10 otherwise be compensated. It's a settlement. It's
11 a give and take.

12 Q Are you suggesting they traded off the
13 values of certain claimants' rights in order to
14 benefit other claimants?

15 A That's one of the effects of it, yes.
16 There were other things that were traded, too, but
17 there are certain claims that wouldn't be
18 compensated. Yes, that's the effect of it.

19 Q Do you think that's what the lawyers
20 intended to do, to say that certain claimants would
21 get less rights so other claimants could get more
22 rights?

23 A I don't know what their intentions were.
24 You look at these deals as a global deal. There are
25 lots of reasons for the lawyers who supported this

1 deal to support it. They made a judgment that it
2 was the best thing, they thought, for asbestos
3 claimants as a whole. That's why they were pushing
4 it. But there were winners and there were losers
5 under this deal among claimants.

6 Q You had done some work back in the early
7 '90s to calculate values for for present claims
8 against a CCR; isn't that true?

9 A I don't know what you're referring to.

10 Q Do you recall in National Gypsum, that you
11 were asked about whether payments made by the CCR,
12 under analysis by a Mrs. Murray, were close to the
13 overall average that you had calculated for present
14 claims of the CCR?

15 A I don't recall what you're speaking about.

16 Q Did you do any testimony related to the
17 fairness of the Georgine settlement in the Georgine
18 proceeding itself?

19 A No.

20 Q Did you do any testimony while the
21 Georgine settlement was under consideration about
22 whether you thought it was a fair approximation of
23 the values in the tort system or not?

24 A I don't recall.

25 Q Well, its true that you couldn't predict

1 in 1994 whether the class action settlement in
2 Georgine would be successful or not?

3 A January '94? I think that's right. You
4 asked me about if there were probabilities. There
5 were probabilities associated with it. It was a
6 matter of uncertainty. There were significant risks
7 about it, to the deal, but it had not yet been
8 finally adjudicated by the Supreme Court.

9 Q In your work as of 1994, had you done any
10 asbestos estimates on behalf of companies who wanted
11 an estimate outside the bankruptcy context for their
12 financial statements?

13 A I'm sorry. Could you -- I didn't track
14 that question.

15 Q Yeah, let me try it again. You know that
16 companies, in the early '90s who had asbestos
17 liabilities, were having to deal with those
18 liabilities in some way on their financial
19 statements?

20 A Yes.

21 Q And some experts, were, including
22 accountants, were assisting them in trying to find
23 out whether or not the right number was under FAS-5
24 or applicable standards to put on their financial
25 statements?

1 A It does.

2 Q Did you do any of that work as of 1994
3 where you were advising companies on how to go about
4 reserving for their asbestos liabilities outside the
5 bankruptcy context?

6 A I don't think that I was asked to do any
7 such work, nor did such work.

8 Q Have you ever done that sort of work?

9 A Well, I've provided forecasts for
10 companies. Whether they used it in their financial
11 statements or not, I can't tell you.

12 Q Outside the bankruptcy context, have you
13 been retained by companies to do asbestos estimates?

14 A Yes.

15 Q When is the most recent retention that you
16 can recall?

17 A Five years or so ago.

18 Q Who was that?

19 A I can't tell you.

20 Q You can't tell me for confidentiality
21 reasons?

22 A Yes, for confidentiality reasons, I can't
23 tell you.

24 Q Was that, then, an estimate not made for
25 public disclosure but for counsel or something?

1 A I was asked by counsel to do it and was
2 told to keep the engagement confidential, both the
3 fact of the engagement and what I have done.

4 Q Are there any estimates of liability
5 you've done for companies outside of the bankruptcy
6 context, including adversary proceedings in
7 bankruptcy, that you can disclose to us?

8 A I've seen estimates that were ultimately
9 used in discussions of later filed bankruptcies or
10 prepackaged bankruptcies.

11 Q Setting those aside?

12 A I think every engagement I've had of the
13 nature about which you've asked me has been a
14 confidential engagement.

15 Q How many of those have there been?

16 A Three or four.

17 Q And when was the most recent one before
18 this one about -- did you say five years ago? --
19 about five years ago?

20 A In and around that. I mean, within a
21 period of two or three years for all of those that I
22 did.

23 Q Have you ever been in management in a
24 corporation that had asbestos liabilities? That is,
25 you've never been an executive of a company that had